

Virginia Public Guardian and Conservator Advisory Board Meeting
Department for Aging and Rehabilitative Services
1610 Forest Avenue, Suite 100
Henrico, VA 23229
March 20, 2014 10:00 am – 2:00 pm

MINUTES

Members Present

Demaris Miller, Chair, Debra Holloway, Lisa Linthicum, Lisa Moore, John Powell (by phone), Kathy Pryor, Mira Signer, Cynthia Smith, Thelma Bland Watson, Lynne Williams

Members Absent

Karen Fortier
Kate Mason
Eileen McDonnell Reinamen

DARS/Virginia Division for the Aging Staff

James Rothrock, Commissioner
Amy Marschean, Senior Policy Analyst
Cecily Slasor, Administrative Support
Kathy Miller, Program Director
Janet James, Esq, Public Guardian Program Director

Guests

Dana Traynham, Esq., disAbility Law Center of VA
Cassie Ender, VA Poverty Law Center
Katie Dean, disAbility Law Center of VA
Linda Redmond, Virginia Board for People with Disabilities

Welcome and Introductions

Chair Demaris Miller called the meeting to order at 10:00 and welcomed members and guests. Chair asked members and guests to introduce themselves. Chair Miller noted that the agenda needed to be amended to appoint a Nominating Committee for new officers and the amended agenda was approved unanimously.

Review of November Meeting Minutes

Chair Miller asked if members had reviewed the November meeting minutes and if anyone had edits or corrections to be made. Lisa Linthicum moved that the minutes be approved and accepted. Dr. Watson seconded the motion. The meeting minutes for November 21, 2013 were unanimously approved.

Nominating Committee Appointments

Chair Miller appointed Mira Signer, Thelma Bland Watson and Kathy Pryor to the Nominating Committee. Lisa Moore moved and Dr. Watson seconded a motion that Lynne Williams and Debra Holloway be added to the committee. The motion passed unanimously.

Commissioner's Report James Rothrock

Commissioner Rothrock reported that many advocates worked hard to promote the need for expansion of the Public Guardian program and need for increased funding in the 2014 General Assembly. DARS receives approximately \$1 million from DBHDS for public guardianship, and this money was transferred to the DARS base budget moving forward. There is \$99,000 annually in Governor McDonnell's proposed budget and approximately \$316,000 annually in the House version of the budget for public guardianship. This funding would help shore up current programs and provide some new slots in programs. The General Assembly will meet for a Special Session to resolve the budget issues beginning on March 24. Additionally, there is some new funding for brain injury programs and long term employment support funding in the Senate version of the budget. The Commissioner also noted Delegate Peace sponsored a bill (HB894) that looked at the Auxiliary Grant to make it portable into the community. The bill died, presumably due to the fiscal impact. But this bill may be considered again next year.

Secretary of Health and Human Resources, Dr. Hazel, has been reappointed by Gov. McAuliffe. He has been working very hard and traveling around the state promoting closing the insurance gap for the uninsured. We have a new DARS staff member, Ali Faruk. He is the Commissioner's Assistant for Policy and Communications. He will be attending various meetings and meeting with DARS staff to familiarize himself with the programs and the network. Along with Bob Blancato (Commonwealth Council on Aging/ AARP) and Bill Kallio (AARP), the Commissioner met with Sec. Hazel about holding a Governor's Conference on Aging sometime in 2015. The Commissioner noted that when he attended his first agency head meeting with Governor McAuliffe, he emphasized financial exploitation of adults as a critical issue he would like the administration to address.

Chair Miller asked about the waiting lists and where the persons on the list are currently residing. She hears there are 932 people on the waiting list, but what does the need look like, who exactly is on the waiting list, and where are they? Commissioner asked Janet James to respond.

Kathy Pryor reported that the budget still is not final and there are issues that need to be addressed. Ms. Pryor distributed information on the budget conferees and the needs and asked members to contact legislators before the March 24 Special Session.

2014 General Assembly Legislative Update (Handout)

Amy Marschean, JD

Ms. Marschean reported on legislation that passed in the 2014 General Assembly session including:

- HB 413: Guardianship bill required reports to be filed under seal
- HB 240/SB572: Long-Term Care Ombudsman access to records
- HB 312: Civil remedy for financial exploitation
- HB 450: Background checks must be received prior to health care providers providing direct care
- Two commission sunsets were removed and the Alzheimer's Disease and Related Disorders Commission was extended to 2017 and the Joint Commission on Health Care was extended to 2018.
- SB 575: Advance Health Care Directive Registry submission by legal representative or designee
- HJ 190: Request the Secretary of Health and Human Resources to examine the use of supported decision-making for individuals with intellectual and developmental disabilities.

Public Guardian & Conservator Program

Janet James, Esq.

Mrs. James distributed a copy of the 2014 report to the General Assembly on the Public Guardian program. She asked the group to turn to pages 7-8 to see real life examples of individuals on waiting lists in response to the Chair's question.

Monitoring of local programs is an annual event performed by Mrs. James. Mrs. James will randomly select around 25% of the program files and perform a rigorous review. She will look at the files for persons who were deceased within the previous six months. Mrs. James will also see about 10% of the programs clients and will pick them randomly. If the client is in a residential setting, Mrs. James will inspect their whole environment.

Public guardians are required to visit the clients once a month. Mrs. James was recently very proud of a guardian in a local program and very encouraged about the hard and necessary work that they do. One of the clients was in declining health and the program worker went to see the gentleman nearly every day because she did not want him to be alone when he passed. The worker was on her way to see the gentleman when he passed away. The program received a nice note of thanks for taking care of the gentleman and was mentioned in the program for his funeral service.

Working Lunch

Supported Decision-Making Model for Persons with Intellectual or Developmental Disabilities

Dana Traynham, Esq.

disAbility Law Center of Virginia

Ms. Traynham began her presentation by asking members “What is the definition of *capacity* ?” After some discussion, she stated it is the ability to acquire information to make an informed decision and communicate that decision. Ms. Traynham also asked the members to discuss substitute decision-making v. best interest standard. Examples of formal substitute decision-making are Advance Directives, Powers of Attorney, Guardianship, Conservator, Representative Payee. Informal arrangements for substitute decisions are decisions made by parents and family members.

A person’s disability (or older person’s cognitive impairment) may be a barrier to their decision-making. People with ID need a frame of reference and information to help with decision-making. There may not be people in their lives to support decision-making in the community. Jenny Hatch and her case is the best and most recent example of a Supported Decision-Making(SDM) situation. Ms. Hatch’s guardianship order is time limited to one year and she will then have SDM. SDM can be informal or formal. Parents of children with ID are dying and only approximately 25% have planned for continued care at their death. Ms. Traynham advocates additional tools for supported decision-making to give persons with ID the necessary supports and time to make decisions. Examples of supports in the community are churches, Senior Centers or personal community matches that could be made. Ms. Holloway noted the Arc has Circles of Support and are using microboards in Southwest Virginia to form corporations to buy homes and rent apartments for persons with ID.

The 2011 UN National Guardianship Summit came up with four standards for guardians to follow:

- 1) Always ask the person what they want
- 2) The guardian will help person express their needs and wants
- 3) Only when they cannot express will a guardian seek input from others
- 4) Use the best interest model when a person cannot make decisions

Ms. Traynham discussed “deliberate deference” which is when a person is wholly dependent upon someone else and their help with making their own decisions. Such a person will always do whatever the doctor says or friend says and SDM will have to counter this undue influence.

Ms. Traynham noted there are currently no evidence-based studies to support the use of SDM. SDM is currently being evaluated for ID and DD, but she believes SDM may be used for persons who are aging and with mental illness, as well.

Mr. Powell noted that the legal world rushes to plenary guardianship and there probably should be greater use of limited legal guardianship.

Ms. Trayham thought this movement could result in better pre-planning and perhaps schools could begin teaching children with ID decision-making skills and not urging parental guardianship. The principles of supported decision-making are used in the Public Guardian program using Values History and person-centered planning and fostering decision-making skills. Ms. Traynham stated she thought that legal guardianship or substitute decision-making would still be needed.

Public Comment Period

There were no public comments.

New Business

Ms. Marschean mentioned members whose terms are expiring.

Meeting Adjournment

Chair Miller adjourned the meeting at 1:00 p.m.